

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**JAMES G. MABREY,**  
Petitioner,

v.

**Case No. 12-CV-00876**

**WILLIAM POLLARD, Warden,**  
Waupun Correctional Institution,  
Respondent.

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**ORDER**

James Mabrey filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 asserting that he is being held in custody in violation of the Constitution or laws of the United States. Petitioner was convicted in Outagamie County Circuit Court of first degree reckless homicide and causing bodily harm to a child. He was sentenced to 50 years confinement on the first conviction and 5 years confinement on the second, to be served concurrently, and he claims he was improperly denied parole. He is currently incarcerated at Waupun Correctional Institution.

Because petitioner is being held pursuant to a state court judgment, he should have filed this petition under 28 U.S.C. § 2254. Federal prisoners must bring habeas corpus challenges to their original conviction and sentence under 28 U.S.C. § 2255, and challenges to the fact or duration of confinement that do not stem from the original conviction under § 2241. *Walker v. O'Brien*, 216 F.3d 626, 632–33 (7th Cir. 2000). State prisoners, on the other hand, should bring all challenges to their confinement under § 2254 because the language in that statute is broader than § 2255. *Id.* Section 2254 encompasses any application “in behalf of a person in custody pursuant to the judgement

of a State court . . . in violation of the Constitution or laws or treaties of the United States.”  
28 U.S.C. § 2254(a). Therefore, if petitioner wishes to pursue this case he must re-file his  
petition under § 2254.

If petitioner chooses to file an amended petition under § 2254, he should bear in  
mind that filing such a petition may prevent him from bringing a habeas challenge at a later  
date because prisoners are barred from bringing “second or successive” § 2254 petitions.  
See 28 U.S.C. § 2244(b). I will ask the clerk to enclose a copy of the form for filing a  
§ 2254 petition when mailing a copy of this order to petitioner.

**THEREFORE, IT IS ORDERED** that the petition is **DISMISSED**. Petitioner has until  
**October 31, 2012** to file an amended petition under 28 U.S.C. § 2254 if he wishes to do  
so.

Dated at Milwaukee, Wisconsin, this 1st day of October 2012.

s/ Lynn Adelman

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LYNN ADELMAN  
District Judge